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Paper No. 8

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APR 23 2004

In re Application of : **OFFICE OF PETITIONS**
McDonnell et al. :
Application No. 09/973,378 : ON PETITION
Filed: 9 October, 2001 :
Atty Docket No. ORT-1510 :
:

This is a decision on the petition filed on 8 April, 2004, which, in the absence of a fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.¹

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to under 37 CFR 1.137(b)." This is not a final agency action.

This application became abandoned on 15 January, 2002, for failure to submit a timely response to the Notice to File Missing Parts of Nonprovisional Application mailed on 14 November, 2001, which set a two (2) month shortened period for reply. Notice of Abandonment was mailed on 17 November, 2003.

The present petition was accompanied by a declaration and authorization to charge the surcharge and petition fee to counsel's deposit account, No. 10-0750. However, on 9 April, 2004, counsel's deposit account contained only \$14.00. Therefore, the Office was unable to charge either the petition fee or the late-filing surcharge.

¹In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. See Krahm v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

An amount sufficient to cover all fees, services, copies, etc., request must always be on deposit. Charges to accounts with insufficient funds will not be accepted.² An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.³

In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.⁴ The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.⁵ As petitioner has not alleged circumstances which would warrant the withdrawal of the holding of abandonment, the petition will be dismissed.

Petitioners should file a renewed petition accompanied by the proper payment.

Further correspondence with respect to this matter should be addressed as follows:

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

²37 CFR 1.25(a).

³37 CFR 1.25(b).

⁴See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

⁵MPEP 711.03(c); see 35 U.S.C. 41(a)(7).

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
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Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the
undersigned at (703) 308-6918.

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